IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 882 OF 2004

Ramdhar Dattu Yadav]
of Mumbai, Indian Inhabitant]
residing at Room NO. 1,]
C.T.S. No. 471, Teli Galli,]
Andheri (East), Mumbai 400069] ..Appellant

versus

M/s. Omex Builders and]
Contractors, a partnership]
firm duly registered under]
the Partnership Act, 1932,]
having its officer at Omex]
Chambers, Teli Galli, Andheri]
(East), Mumbai 400 069] ..Respondent

Mr. A. R. Mishra for the Appellant.
Mr. Y. S. Bhate for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 3RD OCTOBER,2005

ORAL JUDGMENT :

1. Heard learned Counsel for the appellant and the respondent.

2. Appellant is the original defendant and respondent is the Plaintiff. Plaintiff filed a suit for injunction restraining defendant from entering, remaining upon the suit premises, and for mandatory injunction for removing his articles, goods and things and belonging from the suit premises.

3. According to the plaintiff the defendant was in their employment since 1990 to 1997 as a driver and he was permitted to occupy or use Room No. 1, C.T.S. No. 471, situate at Teli Galli, Andheri (East), Mumbai 400 058, i.e. the suit premises. The plaintiff purchased this in 1981. There was a chawl known as Irani Chawl. The said chawl was demolished by the plaintiff and building was constructed named as "Omex Chambers", the tenants in the old building were provided alternate accommodation and the defendant executed agreement dated 7th September 1980 to vacate the room and to shift in the temporary accommodation to be constructed in place of the old building.

4. Further, according to the plaintiff on 9.12.1986 the defendant released his right, title and interest for the permanent accommodation and surrendered his tenancy by accepting Rs.75,000/- and handed over vacant possession to the plaintiff. As

such the defendant had no right, title or interest either in the temporary accommodation or in the alternate accommodation, but the defendant requested for temporary use of the premises and therefore an agreement was entered on 16.12.1990. In 1998 the defendant ceased to be an employee but he continued user and sought to protect his premises by filing application before the Slum Tribunal. Slum Tribunal by its order dated 18.8.1998 dismissed the application. Then defendant filed a Suit No. 5191 of 1998 to protect his possession and he also took out a notice of motion for ad interim relief. The Notice of Motion was disallowed, the defendant had filed Appeal in the High Court, High Court rejected the Appeal, the defendant then filed Writ petition No. 6875 of 1998 but it was subsequently withdrawn. Therefore, in this background of the matter, the plaintiff filed a suit claiming the aforesaid reliefs of injunction and mandatory injunction.

5. The claim of the plaintiffs was resisted by the defendant on the ground that room admeasuring 12 x 15 ft. is in his possession since last several years. The suit premises are situate on the plot of land bearing Survey No. 48, Hissa No. 6, City Survey No. 415/1 to 7. The land is declared as slum by the Government Notification dated 15.10.1977. The defendant also contended that he

was tenant of room NO.2 which was acquired by the plaintiff and plaintiff had agreed to give alternate accommodation to the defendant in the newly constructed building. Defendant admits to have surrendered the tenancy rights and giving up of his claim to the alternative tenancy by accepting Rs.75,000/-.

6. In the background of these pleadings, the trial court framed as many as 7 issues and decreed the suit of the plaintiff, therefore this Appeal.

7. Counsel for the appellant, firstly contended that the suit property was declared as slum area or was in the area declared as slum and therefore no suit against an occupier could lie by virtue of Section 22 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, (hereinafter referred to as "the Act of 1971"). Second objection of the counsel for the appellant was that the suit of the plaintiff was in fact for possession but the suit was valued as if it was a suit for injunction; whereas, in fact, the property should have been valued as per its market value at the time of the suit and if that was done the suit would have been beyond the pecuniary jurisdiction of the City Civil Court, which was Rs.50,000/- at the relevant time. These are the two

submissions made by the counsel for the appellant.

8. As against this, counsel for the respondent contended that the suit property was not covered by the Notification under the Act of 1971 and so far as objection regarding valuation is concerned, the claim was properly valued. That aspect of the matter was rightly considered by the trial court in favour of the plaintiff and hence no interference was required in the judgment of the trial court.

9. In order to substantiate his contention that the suit property falls under the Notification under the Act of 1971, counsel for the appellant tendered certain documents before me during the course of argument, (1) Malamata Patrak certified copy issued by the Authority, (2) is a map issued by the said Authority, (3) is a letter of the City Surveyor dated 23.1.1981, and (4) is a notification dated 27.10.1977, it is Exhibit ’2’. In this notification the area under the slum is described amongst other Survey Nos. 415, 415/1 to 99 and the area is shown as 2728.7 sq. meters. According to the appellant the suit property admittedly stands in Survey No. 415 and therefore as per the Malmata Patrak, now shown to me the CTS No. 415 is sub divided into 107 then 107 being the part of 415 itself is covered by the aforesaid notification of the Government.

Therefore, according to him the suit structure which is in 415/107 is not in the slum area. My attention was also invited to other entries in the Malmata Patrak, where there is a reference to the order of the City Surveyor dated 23.1.1981. All these documents now tendered by the Counsel for the appellants are marked by me for the purpose of easy reference and understanding, Malmata Patraka as R-1 Map as R-2, Order of City Surveyor dated 23.1.1981 and Government Notification, which is Exhibit ’2’ as R-4.

10. Advocate for the appellant therefore tried to contend that if all the documents R-1 to R-4 are taken in to consideration, it will be clear that the suit property undisputedly falls in the slum area and therefore the plaintiff had no right to file the suit by virtue of Section 22 of the Act of 1971.

11. As against this, counsel for the respondent contended that whether the suit property falls in the slums or not, is a question that has been finally decided against the present appellant by the Competent Authorities i.e. Tribunal under the Maharashtra Slum Areas. There is an order of the Tribunal dismissing the application of the present appellant. That order is dated 18.8.1998. It was the case of the appellant before the said Tribunal

that the room is on a plot of land declared as slum i.e. it is on City Survey No. 415. The Tribunal held that the case of the present appellant before the Tribunal was to permit the respondent to remove the offending structure i.e. hut by providing alternate accommodation. According to the Tribunal if the offending structure was on a plot declared as slum, then in that case the appellant was required to move the Competent Authorities and obtain a Certificate that the offending structure is a slum and hence protected, and then only the present appellant was entitled for protection of dispossession without alternate accommodation. However, the Tribunal found that in his application there was not a whisper that his structure was on a plot declared as slum and therefore the Tribunal was not in a position to give any finding in that regard.

12. This order of dismissal of claim of the appellant has become now final.

13. Counsel for the respondent therefore contended that, firstly, before the Tribunal under the Act of 1971 the appellant did not raise the plea that the suit property was in slum or declared as slum, secondly, he contended that the Tribunal has rejected and dismissed application of the applicant

and that order has become final. Thirdly, he contended that defences now raised that the property was in slum was an after thought. Fourthly, he contended that documents R-1 to R-3 were not at all tendered or produced before the trial court and therefore they cannot be taken into consideration. Fifthly, he contended that so-called order of the City Surveyor as per R3 dated 23.11.1981 does not bring the structure in the area of the slum because power to declare a particular area of the slum vests in the Government under the Act of 1971 and City Surveyor's orders cannot supercede the power of the Government. Counsel for the respondent also contended that this document signed by the Survey Department or this order was not made at the instance of the respondent or respondent's predecessors who died in 1978 whereas this document is of 1981.

14. As against this, counsel for the appellant contended that the documents R-1 to R-3 filed by him are copies of the public record and therefore they were admissible and they could be considered.

15. In my opinion, merely because the documents R-1 to R-3 are copies of the public documents, they cannot be read in evidence at the stage of appeal. The basis of these documents is R-3 the order of the

City Surveyor dated 23.1.1981, the Tribunal passed its order on 18.8.1998, 17 years after the same, during that period and even during the pendency of the present suit i.e. from which the present appeal is arising, the appellant did not produce documents before the trial court, nor did he relied upon them.

16. The basic dispute between the parties is whether the suit property is in the area covered by notification dated 15.10.1977 Exhibit ’2’ or R-4. It is a question of fact and for bringing this particular fact, it was necessary for the appellant to prove by clinching evidence that the suit property falls in 415 or 415/107. The appellant has miserably failed to prove this aspect of the matter. The suit of the plaintiff is in respect of a room which is described as room No. 1, now the appellant is trying to show that the suit property is something different than the one described in the plaint claimed, or, different from the one for which relief is claimed. The appellant has so far as factual aspect of the matter is concerned, admitted that he has surrendered and relinquished his tenancy rights by accepting Rs.75,000/-.

17. Therefore, firstly, the appellant has no right whatsoever in the suit premises either of tenancy right or licensee or any right whatsoever.

Secondly even as per his deposition and evidence in the trial court, he has stated the suit premises are part of plot bearing CTS No. 415/1 to 7. The property as per the defence of the defendant - appellant is described as 415/1 to 7 now contending that the suit property is 415/107 is totally a different case. The Notification specifically mentions Exhibit 2 or R-4 415/1 to 99. If R-1 to R-3 are considered, then it would mean that the property is beyond 415/1 to 99, but the case of the appellant in his pleading as well as in his evidence is that the suit property is forming part of 415/1 to 7. Therefore, it is clear that the appellant is trying to make out a new case on the basis of three documents R-1 to R-3. He cannot be permitted to do so at this stage because this is totally contradictory to his case. The documents are also not consistent with his case before the trial court. Therefore, there is no substance in the contention of the appellant that the suit property is covered by the Slums Act or that he gets protection under the Slums Act.

18. The second objection of the appellant’s Advocate was that the suit was not properly valued and in fact it is a suit for possession but improperly valued as a suit for injunction. To this objection of the appellant, counsel for the

respondents pointed out that in the present suit from which this appeal has arisen, the appellant had raised some objections. On the basis of those objections, two preliminary issues were framed by the trial court :

> (1) Whether the defendant proves that the subject matter of the suit is not properly valued and on proper valuation, this court will not have pecuniary jurisdiction to entertain and try the present suit?
>
> (2) Whether the defendant proves that jurisdiction of this court will be barred by virtue of provisions of Slums Act?

Counsel for the appellant contended that those two preliminary issues framed by the court on the basis of the objections raised by the appellant, were decided by the court by its order dated 19.12.2001 and the findings were against the appellant. But the appellant did not challenge those findings, and, therefore, those findings have become final and binding. Counsel for the appellant tried to contend that when he is challenging the decree, then he is entitled to challenge all the interim orders.

19. Counsel for the respondents contended that

these are not the interim orders but they were orders on preliminary issues and therefore findings were binding upon the defendant.

20. I find considerable force in the submission made by the counsel for the respondents in this regard. All the aspects of the matter have been considered by he court while deciding the preliminary issues. In the impugned judgment, this aspect has been considered by the court regarding Issue Nos. 5 and 6 and the court noted that while deciding those issues, opportunity was given to the parties to lead evidence. The evidence on those issues were not challenged by the parties and therefore they will have to be accepted as final. The approach of the court cannot be faulted with. The judgment of the court on these issues is by well speaking and well reasoned order. No fault can be found with it.

21. For all these reasons, there is no merit in this appeal, the same is dismissed with costs along with Civil Application

3.10.2005 (D.G. DESHPANDE, J.)